



Legislation Details (With Board Report)

File #: ORD 21-011 **Name:** REF150048 - Expansion of Greenhouses and Industrial Building for Cannabis Cultivation

Type: Ordinance **Status:** Scheduled PM

File created: 6/14/2021 **In control:** Board of Supervisors

On agenda: 6/22/2021 **Final action:** 6/22/2021

Title: REF150048 - Expansion of Greenhouses and Industrial Buildings for Cannabis Cultivation
Public hearing to consider adoption an ordinance amending Section 21.67.050 of Title 21 of the Monterey County Code (non-coastal zoning ordinance) to:
(a) Allow for permitting of commercial cannabis cultivation within new or expanded greenhouses on properties zoned Farmland that contain at least one greenhouse that was legally established prior to January 1, 2016;
(b) Within Industrial zones, rescind language limiting permitting of commercial cannabis cultivation to occur within industrial buildings legally established prior to January 1, 2016;
(c) Allow permitting of medium cultivation license types (having a canopy of between 10,001 square feet and 22,000 square feet) with an administrative permit in the Light Industrial zoning district; and
(d) Amend language references to permitting of outdoor commercial cannabis.
Location: Inland unincorporated areas
Proposed CEQA action: Statutorily exempt pursuant to California Business and Professions Code section 26055(h).

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A – Draft Ordinance – clean, signed version, 3. Attachment B – Draft Ordinance – redline version, 4. Attachment C – Planning Commission Recommendation, 5. Attachment D – Draft Agricultural Advisory Committee minutes from May 7, 2021, 6. Attachment E – Correspondence, 7. Item No. 20 - PowerPoint presentation, 8. Completed Board Order and Ordinance Item No. 20

| Date | Ver. | Action By | Action | Result |
|-----------|------|----------------------|-------------------------------|--------|
| 6/22/2021 | 1 | Board of Supervisors | approved - rma administration | Pass |

REF150048 - Expansion of Greenhouses and Industrial Buildings for Cannabis Cultivation

Public hearing to consider adoption an ordinance amending Section 21.67.050 of Title 21 of the Monterey County Code (non-coastal zoning ordinance) to:

- (a) Allow for permitting of commercial cannabis cultivation within new or expanded greenhouses on properties zoned Farmland that contain at least one greenhouse that was legally established prior to January 1, 2016;
- (b) Within Industrial zones, rescind language limiting permitting of commercial cannabis cultivation to occur within industrial buildings legally established prior to January 1, 2016;
- (c) Allow permitting of medium cultivation license types (having a canopy of between 10,001 square feet and 22,000 square feet) with an administrative permit in the Light Industrial zoning district; and
- (d) Amend language references to permitting of outdoor commercial cannabis.

Location: Inland unincorporated areas

Proposed CEQA action: Statutorily exempt pursuant to California Business and Professions Code section 26055(h).

RECOMMENDATION:

There are timing benefits to amending the ordinance before July 1, 2021. Should the Board have a desire to act in light of the time constraints, staff recommends that the Board of Supervisors:

- a. Find the project is the adoption of commercial cannabis regulations that require subsequent discretionary permits that are themselves subject to CEQA review, and therefore is statutorily exempt from CEQA the pursuant to Business and Professions Code section 26055(h); and
- b. Adopt an ordinance (**Attachment A**) amending Section 21.67.050 of Title 21 of the Monterey County Code (non-coastal zoning ordinance) to:
- 1) Allow for permitting of commercial cannabis cultivation within new or expanded greenhouses on properties zoned Farmland that contain at least one greenhouse that was legally established prior to January 1, 2016;
 - 2) Within Industrial zones, rescind language limiting permitting of commercial cannabis cultivation to occur within industrial buildings legally established prior to January 1, 2016;
 - 3) Allow permitting of medium cultivation license types (having a canopy of between 10,001 square feet and 22,000 square feet) with an administrative permit in the Light Industrial zoning district; and
 - 4) Amend language references to permitting of outdoor commercial cannabis.

Contrary to the above recommendation, the Planning Commission has recommended that the Board of Supervisors decline to adopt the ordinance because it is inconsistent with the purpose of providing for adaptive reuse of greenhouses and protection of important farmland soils. Additionally, the Planning Commission recommends the Board decline to adopt the ordinance because it does not provide for adequate equity considerations that provide opportunities to larger groups of individuals who wish to participate in the legalized cannabis market.

SUMMARY:

On May 26, 2021 and June 9, 2021, the Planning Commission considered the draft ordinance (**Attachment A**) and adopted a resolution recommending that the Board of Supervisors decline to adopt by a vote of 7 ayes, 0 noes, 2 abstentions, and 1 absent (**Exhibit C**). In forwarding this recommendation to the Board of Supervisors, the Planning Commission found that the ordinance is inconsistent with the original purpose of providing for the adaptive re-use of greenhouses while protecting productive farmlands (as is stated in the policies being amended), and because the revisions do not address equity within the industry since the regulations would benefit only a few property owners who already have an opportunity to participate in the commercial cannabis industry while not providing broad opportunities for all who wish to participate.

On May 7, 2021, before consideration by the Planning Commission, the Agricultural Advisory Committee (AAC) considered making a recommendation to the Board of Supervisors on the concept of allowing new and expanded greenhouses on properties that already contain at least one greenhouse. The AAC passed a motion by a vote of 6 ayes, 2 noes, and 4 abstentions to recommend approval to the Board of Supervisors provided water conservation measures are required for new cannabis cultivation (**Exhibit D**). Existing cannabis regulations already require incorporation of water conservation measures so no new policies on this topic are included in the proposed ordinance.

This effort began in earnest on March 17, 2021 when the Board Cannabis Committee provided direction to staff to prepare an ordinance for consideration by the Board of Supervisors prior to July 1, 2021 (when the statutory exemption from environmental review of cannabis regulations expires), that allows for permitting of commercial cannabis cultivation in new or expanded greenhouses in the Farmland zone provided that: (1) A greenhouse was legally established on the property prior to January 1, 2016; and (2) The new or expanded greenhouse facilities are subject to all applicable building and zoning regulations including the 50% lot coverage standards for greenhouses in the Farmland zone.

In drafting the ordinance directed by the Cannabis Committee, staff identified the potential need to amend similar policies for industrial zones and the need to clean-up references to outdoor cannabis cultivation by

deleting language that prohibits outdoor cultivation and replacing it with reference to the adopted regulations for outdoor cannabis cultivation in Chapter 21.69 of the Monterey County Code (the outdoor commercial cannabis pilot program).

Some comments have been received in opposition to the proposed ordinance (**Exhibit E**). Staff has reviewed those comments and recognizes that the proposed ordinance would have potential environmental considerations such as increases in water demand, increases in traffic, increases in energy demand, and potential conversion of soil-dependent farmlands into non-soil dependent greenhouses. However, the ordinance is statutorily exempt from review under CEQA because the ordinance maintains the requirement for discretionary review of individual permits that are themselves subject to CEQA. As before, in order to cultivate cannabis the applicant must obtain a discretionary administrative permit. This means that environmental impacts of each permit will be evaluated on a case-by-case basis before a permit is granted for new or expanded cannabis cultivation operations.

DISCUSSION:

Changes directed by the Cannabis Committee stem from one section of the current commercial cannabis regulations (Section 21.67.050.B.1). That section states:

“It is the intent of the County to provide for the adaptive reuse of greenhouses in Monterey County and to restrict the proliferation of greenhouses or other structures on productive agricultural lands. To this end, within the Farmland (F) zoning district, indoor and mixed-light cannabis cultivation and cannabis nurseries (Type 1A, 1B, 1C, 2A, 2B, 3A, 3B and 4 state license types) may be permitted with an administrative permit in each case provided that within the Farmland (F) zoning district, the cultivation occurs only within a greenhouse or industrial building that was permitted or legally established prior to January 1, 2016. Greenhouses and industrial buildings may be improved for cannabis activities after January 1, 2016 provided that the footprint of the existing greenhouse(s) or industrial buildings does not change.”

To allow construction of new greenhouses for use in commercial cannabis cultivation, an ordinance amending Section 21.67.050.B.1 of the code is required. In reviewing this Section of the current regulations (21.67.050), staff identified some out-of-date language referring to outdoor cannabis cultivation (21.67.050.A) and similar language to the language quoted above applicable to industrial zoning districts (21.67.050.B.2). The draft ordinance attached would also update those two sections.

Similar regulations exist in the coastal zone; however, the Coastal Commission is unlikely to support revisions to the regulations that could convert row crop (soil dependent) to greenhouse space (non-soil dependent, potted plants). As such, staff is only proposing to amend Chapter 21.67, which is applicable to the inland areas only.

Staff has reviewed current permit applications for cannabis use in greenhouses that are located within the Farmland zoning districts in the inland areas of the County. There are approximately 62 applications on file that meet these parameters. Staff reviewed plans for each application to determine lot size, how much greenhouse area exists on the lot, and the extent to which greenhouses could be expanded within the 50% lot coverage limitation. 27 of the 62 lots could be expanded for a total theoretical maximum area of 7.5 million square feet of new greenhouse space. Approximately 35 lots are already at the 50% lot coverage limits and could not be expanded within the allowable lot coverage. Four of the 27 lots that could be expanded represent most the 7.5 million square feet potential. These 4 lots are larger parcels that contain greenhouses and have the potential to support around 4 million square feet of additional greenhouse area cumulatively.

There are a mix of circumstances surrounding each of the 27 properties. Many of the properties could expand the greenhouse space into areas that are unused or used for parking surrounding existing greenhouses. Some greenhouse properties have uncovered growing areas that were historically used as extension of the flower cultivation operations. Some properties (particularly the 4 larger lots having 40 plus acres), have row crop surrounding existing greenhouses. Examples of this larger lot situation are 460 Old Stage Road and 50 Zabala Road, both in the Salinas vicinity. Another unique circumstance is 15 Kortright Lane in Aromas where a large lot with some greenhouses is surrounded by farmland and forested area. These three addresses represent approximately 3.2 million square feet of the potential 7.5 million theoretical maximum area. If these three properties were to apply for permits to expand greenhouses on a large scale, those individual permits would require planning approvals and review under CEQA. For this and other reasons, staff believes that the actual amount of new greenhouse area that would result from ordinance changes is around half of the theoretical maximum (3 million versus 7 million).

It is unknown what the demand or potential for cannabis cultivation would be in industrial zones. Most of the industrial zoned lands in the unincorporated areas have been developed with structures. Demand for indoor cultivation areas in light industrial zoning districts is also relatively small. Staff does not anticipate significant changes that would result from proposed revisions in the ordinance regarding industrial zoning districts. Also, restrictions on permitting of medium sized cannabis cultivation license types in the Light Industrial zones are obsolete because the size of the canopy in an industrial building is limited by the size of the building in which the cultivation occurs. Also, cultivators are able to obtain multiple smaller licenses to achieve the same amount of square footage anyways.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Direction from the Cannabis Committee was to take advantage of an exemption in California Business and Professions Code section 26055(h), which provides a statutory exemption from CEQA for the adoption cannabis ordinances when the ordinance requires discretionary review of individual permits pursuant that are themselves subject to environmental review under CEQA. The statutory exemption provided in the Business and Professions Code section 26055(h) expires on July 1, 2021, so the ordinance must be approved by the Board of Supervisors prior to that date in order to apply the exemption to the ordinance. The draft ordinances would not change the requirement for discretionary review of individual applications that would individually be subject to CEQA review.

Using the statutory exemption in place until July 1, 2021 would delay the need to consider environmental effects to the individual permitting phase. This could be problematic given that the Board has adopted a multi-site Initial Study/Mitigated Negative Declaration (IS/MND). Allowing for new construction and expanded cultivation area may require revisions to the adopted IS/MND because new construction and additional cultivation area was not previously considered in that IS/MND.

If the Board declines to adopt the ordinance as recommended by the Planning Commission, that decision would be statutorily exempt from CEQA pursuant to Section 15270 of the CEQA Guidelines and a project that is disapproved or rejected.

OTHER AGENCY INVOLVEMENT:

This report has been drafted by Housing & Community Development with input from the Agricultural Advisory Committee and the Planning Commission. The Ordinance has been approved as to form by the Office of County Counsel.

FINANCING:

Staff time associated with preparation of the ordinances and this report is included in the FY20/21 budget for the agencies involved.

This ordinance would provide for the potential to increase cannabis cultivation canopy within the County by allowing new and expanded greenhouses and by allowing new industrial buildings. Taxes are collected based on canopy area for cultivation. The theoretical maximum added canopy is approximately 7.5 million square feet; however, it is very unlikely that this maximum would be realized. Actual canopy area that may be added is unknown at this time. Staff's best estimate is that the actual canopy area is likely around 2 million square feet. At the current tax rate of \$5 per square feet, the added canopy area would result in general fund revenue of approximately \$10 million annually. Some additional resources may be required to monitor, permit, and inspect added space but those additional resources are expected to be minimal. The Cannabis Program will continue to monitor and report on staffing and funding levels and is not requesting additional funding at this time.

Should the Board elect not to act on this item and desire to consider it later, the County would incur additional costs associated with conducting the environmental analysis in the future. These costs have not been programed in the FY21/22 budget.

Due to the late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to fully review for potential fiscal, organizational policy, or other implications to the County of Monterey.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Cannabis ordinances would align with several of the Board's Strategic Initiatives. Processing these amendments would allow the County to process applications in a timely manner in accordance with new state law, provide additional regulations to maintain health and safety within this emerging industry, and allow for new economic opportunities that currently do not exist.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Craig W. Spencer, Planning Services Manager, ext. 5233

Reviewed and Approved by: Erik Lundquist, AICP, HCD Director

The following attachments are on file with the Clerk of the Board:

- Attachment A - Draft Ordinance - clean, signed version
- Attachment B - Draft Ordinance - redline version
- Attachment C - Planning Commission Recommendation
- Attachment D - Draft Agricultural Advisory Committee minutes from May 7, 2021
- Attachment E - Correspondence

cc: Front Counter Copy; Planning Commission; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; RMA-Code Enforcement; Health Department; Economic Development; County Counsel; Sheriff; Treasure/Tax Collector; Agricultural Commissioner; District Attorney; CAO's Budget Office; CAO's office; Craig Spencer, Project Planner; The Open Monterey Project

(Molly Erickson); LandWatch; John H. Farrow; Cannabis Interested Parties List: Cannabis Interested Parties List; Planning File REF150048